IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

WP(C).No. 33502 of 2004(L)

PETITIONER:

D.JAYACHANDRAN,
SENIOR SUPERINTENDENT (RTD),
FORMER STORE KEEPER UNDER DAM DIVISION NO.III,
IDUKKI, RESIDING AT C2-4/656, SREEVILASAM LANE,
AMBALAMUKKU, KAWDIAR, THIRUVANANTHAPURAM.

BY ADV. DR.K.P.SATHEESAN,
SRI.K.K.GOPINATHAN NAIR,
SRI.M.R.JAYAPRASAD,
SRI.K.K.RAJEEV,
SRI.T.K.KAMALJITH.

RESPONDENTS:
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1. **KERALA STATE ELECTRICITY BOARD**
   (KSEB IN SHORT), REP. BY ITS SECRETARY,
   VYDYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM.

2. **THE CHIEF ENGINEER (H R M),**
   KERALA STATE ELECTRICITY BOARD,
   VYDYUTHIY BHAVANA, PATTOM,
   THIRUVANANTHAPURAM.

BY ADV. SRI.JOSE J.MATHEIKEL, SC, KSEB,

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.33502/2004:

J U D G M E N T

THE WRIT PETITION IS DISMISSED FOR DEFAULT.

13/07/2007. **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.**

//TRUE COPY//

prv.

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.33502 OF 2004-L

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Dated this the 10th day of August, 2007.

JUDGMENT

The petitioner was an employee of the K.S.E.Board. He retired from service on 29-2-2000. It appears that there were some allegations against him as to misappropriation of some of the goods of the Board from its Stores. Proceedings initiated before the criminal court ended up in an order of acquittal. The Board, however, started effecting recoveries from his monthly salary. Petitioner had repeatedly making representations to the Board authorities to stop such recovery. Ultimately, while he retired on 29-2-2000, a show cause notice dated 22-6-2000 was, thereafter, issued to him proposing recovery. Those proceedings ended up with the endorsement of the Lok Ayukta holding that there was no

fixation of liability except a provisional decision by the Executive Engineer on 4-2-1986 and that such a fixation was without notice to the petitioner. Thereafter, the authorities in the lower rung again proceeded with action leading ultimately to Ext.P11 appellate order of the Chairman of the Board in which it has been categorically held that neither the explanation of the petitioner is called for nor was he personally heard before fixing the final liability and the show cause notice that was issued on 6-11-2002, i.e. two years after the retirement, was only calling for his explanation as to why the amount of liability already fixed shall not be recovered. Therefore, it is obvious that even on that day, there was no fixation of the liability, if any, of the petitioner. That order of the Chairman is dated 12-2-2004. Therefore, for a period of more than three years, or nearly four years, after his retirement, matters stood without any fixation of liability being made with show cause notice and opportunity of hearing being extended to the petitioner. This means that the right or power of the Electricity Board as the employer to invoke the

provisions of Rule 3 in Part III Kerala Service Rules no more survived in view of the outer time limit fixed as per Note 3 to that Rule. The liabilities of an employee should be quantified either before or after retirement and intimated to him before retirement if possible or after retirement within a period of three years on becoming pensioner. The liabilities of a pensioner should be quantified and intimated to him. Noticing Note 3 to Rule 3, the Division Bench of this Court in **W.A.No.1841/1998** [State of Kerala v. Balan (2003 (3) KLT 16 Case No.22)] has categorically laid down that the final orders fixing the liability ought to have been passed within the time limit provided in Note 3 to Rule 3. It is also necessary that such final order has to be the final determination after a show cause notice and opportunity of being heard. The impugned recovery is, therefore, unauthorised and without the sanction of law. The same has to go.

In the result, this writ petition is allowed quashing Ext.P13. The amounts due as DCRG will be released to the

petitioner with interest as per Rules. Without quantification, the Board had no right to effect recoveries from the salaries and accordingly, the amounts recovered from the salaries on account of the alleged misappropriation by the petitioner would also be refunded, however without any order as to interest on such amount since the petitioner had not challenged such recovery before Court before the institution of this writ petition. The said amounts shall be released to the petitioner within one month from the date of receipt of a copy of this judgment.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-